CASE NO.
120
NORTHERN DISTRICT

PART OF NAPA GRANT

G. N. CORNWELL
CLAIMANT

LAND CASE 120 ND 68 pages

OCT 20 1962

726

Nathan Dimes

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TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 726

G. N. Cornwell CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

Napa

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, *that on this* second day of March, *Anno Domini One Thousand Eight Hundred and Fifty-*Three, *before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;*

The Petition of G. W. Cornwell *for* part of *the Place named* "Napa", *was presented, and ordered to be filed and docketed with No.* 726, *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

San Francisco, March 9th 1853.

In Case No. 726, G. W. Cornwell for part of "Napa", the Counsel for the Claimant filed the following Stipulation, to wit;

(Vide page 13 of this Transcript)

San Francisco, April 4 1854.

Case No. 726, was submitted on briefs and taken under advisement by the Board.

San Francisco, April 10 1854

In the same Case the counsel for the Claimant filed the following Stipulation, to wit;

(Vide page 13 of this Transcript)

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San Francisco, April 11 1854.

In the same Case Commissioner Alpheus Felch delivered the opinion of the Board confirming the claim;

(vide page 15 of this Transcript)

San Francisco, Aug. 15 1854.

In the same Case, on motion of the U. S. Law Agent, the following order was made, to wit;

(vide page 16 of this Transcript)

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Petition

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To the Hon. the Board of Commrs for settling private Land claims in California

The petition of Geo. N Cornwell respectfully shows; that on the 21st of Sept. 1838 Juan B Alvarado Governor of California by virtue of the Colonization Law of Mexico of the 18th of Aug. 1834 and the Instructions of the 21st Nov. 1828 granted to Salvador Vallejo a certain tract of Land called Napa situate in the present County of Napa with the boundaries described in the petition and accompanying map which original petition and map with the approval of the Diputation and acceptance of Secular possession are filed in claim No. 495 in the office of the Secretary of this Board, hereby referred to and prayed to be made part of this petition -

That on the 26th of December 1850 said Salvador sold and conveyed to M. G Vallejo a certain portion of said tract, more particularly described in the deed of conveyance, a certified copy of which with the translation are herewith submitted marked B. & C.

That M. G Vallejo sold & conveyed to your petitioner said portion of land, as set forth in the deed of conveyance a certified copy of which is herewith submitted marked D.

That said portion of land is sold & conveyed by specific metes and bounds no quantity being mentioned

The petitioner further shows, that on the 28th of August 1849 said Salvador & Maria Luiza his wife sold and conveyed to Jacob I Benjamin & to your petitioner another portion of said tract more particularly described in the Deed of conveyance herewith submitted marked E.

That on the 13th July 1850 said Benjamin sold and conveyed to your petitioner his said joint interest in said portion as set forth in the deed of conveyance which is herewith submitted marked F

That said portion of land contains One hundred & fifty acres (150) acres

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You petitioners further show that said patents of Land have been for some fifteen years & are now in the quiet & undisputed possession of your petitioner and those under whom he holds

That he relies for confirmation of said claims upon the Original title papers above referred to & upon such other & further proofs as he may be advised are necessary -

Wherefore he prays confirmation of his titles to said Land

Rosa
Fulelumane
(his)
X
mark

Filed in Office March 2nd 1853
Geo. Fisher
Secy

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Translation C.

Translation.

Salvador Vallejo to Mariano G Vallejo - Filed for record Dec. 26th A D 1850 at 20 minutes past 1 O'clock PM

At the City of Sonoma Alta California on the 26th of December 1850 Don. Salvador Vallejo of the first part and Don. M. G Vallejo of the second part agree, that the first sells to the second for the sum of one thousand dollars, which he has received in current money, a Lot situate at the upper embarcadero of Napa, which is more or less - as follows: Commencing from a little creek which empties itself into the Creek of Napa and this immediately into the River Napa - following the inundations of the little creek on this side until it joins the property these sold to George N Cornwall & Benjamin thence following the South boundary of said Cornwall & Benjamin till touching the River Napa, thence running along the bank of said river its undulations as far as the mouth of the creek of Napa and thence to the starting point - Which Lot he sells and conveys forever in the name of his heirs & successors or of whomsoever they may in any manner hold it, and in order that he may take possession of it; he resigns and conveys it to Senor Don M. G. Vallejo his heirs & successors that he may do with it whatever he may deem proper, giving it as though judgment had been passed upon it & and for such purposes as may be deemed convenient he extends present title deed, signing it in presence of the witnesses who sign this day month & year

Salvador Vallejo

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State of California }
County of Sonoma } ss

Personally appeared before the undersigned County Clerk of Sonoma County the above named Salvador Vallejo who is personally known to me to be the person described in and who executed the foregoing deed, and who acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned

Given under my hand & private seal of Office, there being no seal of office yet provided, this 26th day of December A.D. 1850

John Hendley
Clk

State of California }
County of Napa ss }

I John Seawell County Recorder in and for said County hereby certify that the foregoing is a full true and correct copy of the record of a Deed from Salvador Vallejo to Mariano G Vallejo as recorded in Book A Pages 256 and 257 in the records of said County —

Witness my hand and Official seal at Napa City this 2nd day of February A.D. 1853

John H Seawell Recorder
By C S Coffinberry Dp Recorder

Seal

Filed in Office March 2nd 1853
Geo. Fisher
Secy

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Deed D

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Know all men by these presents that I Mariano G Vallejo of the City of Sonoma State of California for and in consideration of the sum of One thousand five hundred dollars to me in hand paid by George N Cornwell of Napa City State of aforesaid the receipt whereof is hereby acknowledged do grant bargain sell and convey unto the said George N Cornwell his heirs and assigns forever all that certain piece or parcel of land situated in Napa Valley on Napa river adjoining Napa City, bounded and described as follows: Commencing at a small Oak tree, on the North Bank of Napa river (near the upper landing) thence running due West along the South line of Cornwell's land to the Arroyo de Napa, thence down said Arroyo to Napa river, thence up said river to the place of Beginning; thus being the same piece of land conveyed by Salvador Vallejo to M G Vallejo by deed bearing date Sonoma December 26th 1850 Reference being had to the archives of Napa County Book (A) page 256. To have and to hold all and singular the above described premises together with all Improvements privileges and appurtenances to the same belonging to the said George N Cornwell his heirs and assigns forever; and I the said M.G. Vallejo for myself and my heirs Executors and administrators do hereby Covenant to warrant and defend the above granted premises to the said G.N. Cornwell his heirs and assigns forever against the lawful claims and demands of all Persons

In witness Whereof We Mariano G Vallejo and Benicia C Vallejo his ~~wife~~ wife in token of her release of all right of Dower in the above granted premises have hereunto set our hands and seals this 10th day of June in the year of Our Lord One thousand Eight hundred and fifty One

Signed sealed and delivered M. G. Vallejo (Seal)
in presence of

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State of California }
County of Sonoma }

On this 10th day of June A.D. 1851
Before me the undersigned County Clerk of Sonoma County, personally appeared Mariano G Vallejo known to me to be the person described in and who executed the foregoing Instrument, who acknowledged to me, that he executed the same freely and voluntarily for the uses and purposes therein mentioned Given under my hand and private Seal there being no Seal of Office yet provided, at Office in the City of Sonoma the day and date above written

John Hendley Clerk

Filed for record June 10th 1851 at 6 o'clock P M and recorded in Book A pages 332 Archives of Napa County -

H. H Lawrence Recorder
By J M Redmondson Deputy

Filed in Office March 2d 1853
Geo. Fisher
Recy

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Deed E

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Know all men by these presents: That I Salvador Vallejo of the Town of Sonoma and District of Sonoma, in Consideration of the Sum of Seven hundred and fifty dollars, paid to me by George N Cornwell and Indyce I Benjamin, the receipt whereof is hereby acknowledged doth grant, bargain sell and convey unto the said Cornwell and Benjamin their heirs and assigns forever, all that certain tract or parcel of Land, situated in the Valley of Napa On the North West side of Napa Creek; being bounded and described as follows, Commencing at a small tree standing near the upper embarcadero On the bank of said Napa Creek about two hundred yards more or less from the Store now occupied by Vallejo & Frisbie - thence running a due West Course two hundred yards thence running a due North Course to the Main Creek of Napa Valley; thence running along said Creek to the place of beginning - To have and to hold the above granted premises to the said Cornwell & Benjamin their heirs and assigns forever and I the said Vallejo for myself and my heirs Executors and administrators do hereby Covenant with the said Cornwell and Benjamin their heirs and assigns To Warrant and Defend the above granted premises to the said Cornwell and Benjamin their heirs and assigns forever, against the lawful claims and demands of all and every person or persons - In witness whereof we the said Salvador Vallejo and Ma Luis Canillo his wife in token of her release of all right of dower in the granted premises have hereunto set our hands and seals - this Twenty Eighth day of August A D One thousand Eight hundred and Forty nine

Signed sealed and delivered in presence of
John B Frisby

Salvador Vallejo (Seal)
Ma. Luis Canillo (Seal)

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Territory of California
District of Sonoma

Personally appeared before me the undersigned Alcalde of said District Salvador Vallejo and Ma Luz Carrillo his wife and acknowledged the foregoing instrument of writing to be their act & deed for the purposes therein mentioned

Given under my hand at Office in Sonoma this 28th day of August 1849

L W Boggs

Filed for record Aug. 28th 1849
L W Boggs

Recorded in Book D pages 19 and 20 Book of Records of Sonoma

Received for record May 14. 1850 at 3 minutes past 9 A.M. and recorded in Book A p 20 Archives of Napa County

M.A.N. Hendley
Recorder

Filed in Office March 2d 1853
Geo Fisher
Secy

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Deed F

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Know all men by these presents that I Jordyce I Benjamen of the Town of Napa, Napa County State of California for and in consideration of the sum of four thousand Dollars paid to me by George N Cornwell the receipt whereof is hereby acknowledged do grant bargain sell and convey unto the said Cornwell his heirs and assigns forever All my right title and interest of in and to all that certain tract or parcel of land, situated in the Valley of Napa on the North west side of Napa River being bounded and described as follows. Commencing at a small Oak tree, standing near the Upper Embarcadero On the Bank of said Napa River, about One hundred and twenty yards "More or less" from the stone house Occupied by Vallejo & Fisbie, from said stone running a line West course two hundred yards thence a line North course two hundred and Eighty Eight Perch to a stake, thence at right angles due East to the Napa River, thence along the Meanders of said River to the place of Beginning, said tract containing One hundred and fifty acres – To have and to hold the above granted premises with all the rights profits privileges and appurtenances thereunto belonging to the said G N Cornwell his heirs and assigns forever, this tract being the South part of a tract of land purchased of Salvador Vallejo by Cornwell and Benjamin by deed bearing date August 28th 1849 and recorded in Book A page 20 Archives of Napa County –

In Witness whereof we the said Jordyce I Benjamen and Martha Benjamen his wife in token of her release of all right of Dower in the above granted premises, have hereunto set our hands and affixed our seals this thirteenth day of July One thousand Eight hundred and fifty

J. J. Benjamen (Seal)
Martha A Benjamen (Seal)

Signed Sealed & delivered in presence of James W Johnson

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State of California }
Napa County } ss

Personally appeared before me Recorder of Napa County, F. J. Benjamin and Martha his Wife to me known to be the persons who executed the written instrument and acknowledged that they Executed the same for the uses and purposes therein Expressed and the said Martha wife of said Benjamin being examined by me Separate and apart from her said husband acknowledged that she Executed the same of her own free will without fear or Compulsion on the part of her said husband

M H N Kendley

Filed for Record July 13th 1850 1/2 past 3 Oclock PM

Recorded in Book A page 63 Archives of Napa County

M H N Kendley
Recorder

Filed in Office March 2d 1853
Geo. Fisher
Clerk

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No. 726

George N. Cornwell
vs
The United States

Stipulation

It is hereby agreed by and between the parties hereto by their respective Attorneys that the original paper filed in Claim No 495 and marked A. and translation marked B may be considered as filed in this case and may be read in evidence herein, and also that the transfers E and F filed in this case shall be deemed and taken as proven and may be read in evidence in this case – The land claimed being a portion of the Rancho de Napa. Confirmed in case No. 495

J. H. McKune
Surv Genl

Filed in Office April 10th 1854
Geo. Fisher Secy

G. N. Cornwell
vs
U. States
Claim
No. 726

Stipulation

The above claim being a portion of deliverd from the Original claim No. 495 – filed before the Board of L. Comrs it is agreed between the U. S. Surv Genl & Claimant's Counsel that the testimony taken in said Original claim may be used as evidence in this claim

Rose for Claimant

R Gunkore Ap. Surv Genl

Filed in office March 9th 1853
Geo. Fisher Secy

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15 726 Geo. N Cornwell vs The United States } "For two parcels of Land containing acres, part of the Rancho called Napa in Napa County-

Opinion of Board by Com Felch

"The land claimed in this case is alleged to be part of the Rancho called Napa Originally granted to Salvador "Vallejo, from whom through several mesne Conveyances the present claimant derives title— By written Stipulation between the Land Agent and the Attorney for the claimant the testimony and certain Original Documents filed in Case No 495- which relates to the same Original grant by Governor Alvarado bearing date December 21st 1838 the approval thereof by the Departmental Assembly on the 23d day of the same month, and the giving of peaceful possession to the grantee on the on the 8th day of February 1844 - They also show that said grantee went into possession of the Land in 1838 or 1839 and occupied the same built a house had horses and cattle on the place and cultivated the Land. This proof is sufficient to establish "Vallejo's right to the Land designated in his grant and to enable him to transfer his title by conveyance to another

In proof of his title to the piece of Land first mentioned in his petition, part of said Rancho described by metes and bounds, the claimant has given in Evidence duly certified Copies from the Recorders Office of a deed made by said Salvador "Vallejo to M. G Vallejo on the 26th December 1850 and a deed from said Vallejo to himself dated June 10th 1851

In proof of title in him to the second portion of said ~~Land~~ premises described in his petition the claimant has presented similar Copies of the following Conveyances to him to wit;

First. A deed from said Salvador Vallejo and wife

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to George N Connwell the claimant and Francis J Benjamin dated August 28. 1849
Second – A deed from said Benjamin and wife to the claimant dated July 13. 1850. This deed bars all the interest of said Benjamin in the South part of the premises described in the last mentioned Conveyance, depending by metes & bounds the land so relinquished – By this conveyance the present claimant became the full Owner of the portion of land described therein while, as to the remaining portion of the premises conveyed to him and Benjamin jointly he remained as before the Owner of One undivided half Only and can be entitled Only to a Confirmation of that interest The right of the claimant to the share above mentioned is established by the evidence and a decree will be entered accordingly

Confirmed

Filed in Office April 11th 1854
Geo. Fisher Secy

And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California is is hereby, Ordered; that two Transcripts of the Proceedings and of the decisions in this Case, and of the papers and evidence upon which the same are founded be made out and duly certified by the Secretary, one of which Transcripts shall be filed with the Clerk of the United States District for the Northern District of California and the other be transmitted to the Attorney General of the United States.

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726 George N Cornwell
vs
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said petitioner is valid and it is therefore decreed that the same be confirmed — The lands of which confirmation is hereby made are a part of the place known by the name of Napa which was granted to Salvador Vallejo which place is described and bounded as follows, to wit; Commencing on the Arroyo of Napa at the boundary of Nicholas Higuera, thence following a Southerly direction to the lower pass of the Arroyo de los Carneros six thousand varas to a pile of stones; thence towards the North west along the Arroyo six thousand varas to the upper road which goes to Napa; thence along the same Arroyo North-North West to the upper road which goes to the Rancho of Yuruk four thousand six hundred varas thence continuing on the same course to the boundary of said Yuruk by estimation ten thousand varas; thence towards the North North East three thousand two hundred and fifty varas to the river Napa; thence down the same river course South East to the Arroyo of Napa fifteen thousand one hundred and twenty five varas and thence following the same Arroyo Westwardly two thousand six hundred varas to the place of Beginning, containing four square Leagues of land agreeably to the grant to Sonoma Vallejo and the plat and measurement thereof

The portion of the above described premises of which confirmation is hereby made is bounded and described as follows, to wit, All that certain piece or parcel of land situated in Napa Valley on Napa river adjoining Napa City bounded and described as follows commencing at a small Oak tree on the

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North Bank of Napa river (near the upper Landing) thence running due West along the South line of Cornwell's Land to the Arroyo de Napa thence down said Arroyo to Napa river thence up said River to the place of beginning being the same Land described in a deed from Mariano G Vallejo to George N Cornwell dated June 10th 1851

Also another portion of said tract called Napa bounded and described as follows, Commencing at a small Oak tree standing near the upper Embarcadero On the Bank Of said Napa river About One hundred and Twenty yards "more or less" from the Store Now Occupied by Vallejo & Frisbie from said tree running a due West Course two hundred yards, thence a due North Course two hundred and Eighty Eight perches to a Stake thence at right Angles due East to the Napa river, thence along the meanders of said river to the place of beginning, this tract being the South part of a tract of Land purchased of Salvador Vallejo by Cornwell and Benjamin by deed bearing date August 28. 1849, and the same tract described in a deed from said Benjamin and wife to said Cornwell dated July 13. 1850

Also the undivided half of another portion of said tract called Napa, bounded and described as follows to wit. Commencing On the Bank of said Napa river at the North East Corner of the parcel of Land last above mentioned thence running On North line thereof to the North West Corner of the same thence a due North Course to said river Napa and thence along said river to the place of beginning. being the North part of a tract of land purchased of Salvador Vallejo by Cornwell & Benjamin by deed bearing date August 28th 1849.

Alpheus Felch
Thompson Campbell
R Aug. Thompson
Commissioners

Filed in Office April 11. 1854. Geo. Fisher Secy

Filed in Office April 11. 1854. Geo. Fisher Sec'y

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

I, George Fisher Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing eighteen pages, numbered from 1 to 18, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 726 on the Docket of the said Board, wherein G. N. Cornwell the Claimant against the United States, for the place known by the name of Napa

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this thirtieth day of October A. D. 1854, and of the Independence of the United States of America the seventy-ninth

Geo: Fisher
Sec'y.

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U. S. DISTRICT COURT,

Northern District of California.

No. — 120 —

THE UNITED STATES,

vs.

G. N. Cornwell

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 726

Filed, November 2d 1854

Jno A Morrow

Clk

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Office of the Attorney General of the United States,

Washington, 10th February 1855.

J. N. Cornwell
vs.
The United States. } 726.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 12th day of November 1854, the appeal in the district court of the United States for the Northern Judicial district of California will be prosecuted by the United States.

Cushing

Attorney General.

U. S. District Court for
Northern District, Cala.

The United States

vs

J. N. Cornwell

No. 120

Notice of Appeal,

Filed March 20. 1855,

John A. Monroe,

Clerk

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Office of the Attorney General of the United States,

Washington, 10th February 1855.

I. N. Cornwell.
vs.
The United States. } 726.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 12th day of November 1854, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Cushing

Attorney General.

No. 120

U. S. D. Court N. Dist.

The United States
vs.
J. N. Cornwell

Appeal Notice.

Filed May 5. 1863.
G. Clebes,
Deputy.

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To the Hon Dist Court of the U.S. in & for the Northern Dist of Cala

The United States
v
Geo W. Cornwell

D.C. 120 : L.C. 726

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The petition of the United States by their attorney, represents that this cause is an application for a review of the decision of the U.S. Land Commission whereby the title of the appellee was confirmed as will appear by reference to the record in the case: That a transcript of said record was filed in this Court on the 2d day of Novr 1854: that a notice of appeal was filed on the 20 day of March 1855; that the land claimed lies in the said District and that said title is invalid.

Wherefore appellants pray that said decision be reversed and that said title be decreed invalid by this Court.

San Francisco Feb 13, 1857

Blanding
Atty

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U. S. Dist Court

The United States

v

Geo W. Cornwell

Petition

Filed Feby 13, 1857.
W. H. Chevis,
Deputy.

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Blanding
USA

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In the District court of the United States for the Northern District of California

The United States
vs
George N. Cornwell

Case No. 726 in U.S. Sd court

To

Please take notice that I have this day substituted & do hereby substitute S. D. Bristol as my attorney in the above entitled cause, in the place of Robert Rose, and desire that the said Bristol may be substituted on the records as my said atty—

San Francisco 22d Nov 1862

G. N. Cornwell

U. S. Dist Court

No. 120.

The United States

vs

G. N. Cornwall

Substitution of Atty

Filed April 7. 1862.

W. H. Chevers.

Clerk.

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Monday the Seventh day of April in the year of our Lord one thousand eight hundred and sixty-two.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,
v.
George N. Cornwall,

No. 120.

And now at this day, on reading and filing notice of substitution of attorney, signed by the Claimant, and on motion of J. D. Bristol, Esq. it is ordered by the Court that the said Bristol be, and he is hereby substituted as attorney for the Claimant herein, in lieu of Robert Rase, Esq.

120.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Geo. A. Cornwell.

Order substituting I. D. Bristol, Atty for Claimant, in lieu of Robert Rose.

Filed April 7th 1862

W. H. Chevers,

Clerk.

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In the District Court of the United States for the District of California

The United States
v.
George N. Cornwell

U.S. District Court
No 120
Land Law No 426

To the Hon Ogden Hoffman Jr Judge

The petition of Otto H. Frank respectfully shows: that on the 23rd day of February A.D. 1857, there was finally confirmed to him by a decree of this Honorable Court, duly entered on appeal by the United States, from a decree of confirmation of the same land, by the Honorable the Commissioners, which had prior to said date, been organized under the act of Congress of March 3rd 1851, entitled "an act to ascertain and settle the private land claims in the State of California" for the purpose of ascertaining and settling private land claims in said State, a portion of what was then, and is known, as the Rancho of Napa, in Napa County in said State, which Rancho was granted by the Republic of Mexico to Salvador Vallejo on the 21st day of September

A.D. 1838, Containing Four Square leagues more or less,

Your petitioner further shows that the land so Confirmed to him is described as follows, to wit, All that portion of the said Rancho which was Conveyed to your petitioner by Herman Wohler by deed dated on the 20th day of March A.D. 1852, and recorded in the Recorders office in the said County of Napa in Book B. on pages 160 & 161, and more particularly described, as all the lands in said Rancho, which had not been before the date of said deed sold and Conveyed by the said Salvador Vallejo, or said Herman Wohler, by deed before that time, to wit, the 20th day of March A.D. 1852, duly recorded in the Office of the Recorder of the said County of Napa, reference being made in the said decree of Confirmation Entered in this Court, to the said deed from Wohler to your petitioner,

Your petitioner shows that in the proceedings before the said Commission and before this Honorable Court, which resulted in the said decree of Confirmation, he claimed to derive, and did derive, and deraign his title to the land Confirmed

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to him from the said Salvador Vallejo, deriving his title as aforesaid, through the said Wohler, and from no other source.

Your petitioner further shows that on or about the 2nd day of March 1853, the said Cornwall filed his application before the said Commission for a Confirmation to him of a portion of the said Rancho described as follows, to wit. Commencing at a small oak tree on the north bank of Napa River, near the upper landing, thence running due West along the south line of Cornwell, land to the Arroyo de Napa, thence down said Arroyo to Napa River, thence up said River to the place of beginning.

Your petitioner further shows, that on the 11th day of April 1854, the said Commission Confirmed to the said Cornwall the title to the said land for the Confirmation of which he had made application as aforesaid, according to the description aforesaid.

Your petitioner further shows that in the proceedings before the said Commission, on the said application of Cornwall, which resulted in the Confirmation to him as aforesaid, he

claimed to have derived his title, and to derai gn his title, to the land confirmed to him, through a mesne conveyance from M. G. Vallejo, from and under said Salvador Vallejo, as his original source of title, and from, and under the Grant to said Salvador Vallejo as aforesaid, and from no other source.

Your petitioner further shows, that on or about the 2nd day of November A. D. 1854, an appeal was taken from the decree of the said Commission, confirming the said land, to said Cornwall, to this Honorable Court, which appeal is now pending herein.

Your petitioner further shows that in the proceedings before said Commission which resulted in a decree of confirmation in favor of said Cornwall as aforesaid, the said Cornwall relied exclusively upon the following which he claimed to be his true or only deraignment, or chain of title to the said land confirmed to him, that is to say, what purported to be a deed from said Salvador Vallejo, to M. G. Vallejo, which purported to have

have been dated December 26, 1850, and a deed from said M. G. Vallejo to said Cornwall, dated June 10th 1851; in which last deed the property, or portion of said Rancho, which it purported to convey, and in the said confirmation to Cornwall, is described differently than it is described in the said deed from Salvador Vallejo, to said M. G. Vallejo, that is to say, it is described therein as follows. "A lot situated at the upper Embarcadero of Napa, which is more or less as follows, Commencing from a little Creek which empties itself into the Creek of Napa, and this immediately into the River Napa, following the undulations of the little Creek on this side, until it joins the property these sold to George N. Cornwall and Benjamin; thence following the South boundary of said Cornwall and Benjamin till touching the River Napa; thence running along the bank of said River and its undulations as far as the mouth of the Creek of Napa, and thence to the starting point.

Your petitioner further shows, that by the substitution of the description of

said property, which appear as afore said, in the deed from M. G. Vallejo to Cornwall, and in the decree of Confirmation to Cornwall, for the description which appears in the deed from Salvador Vallejo to M G Vallejo, a much larger area of land is Embraced, than that which the deed from Salvador Vallejo to M G Vallejo purported to Convey, as appears by the annexed diagram to which reference is hereby made, which is made part hereof, marked Exhibit A.

Petitioner further shows that said Salvador Vallejo, has made no other sale or disposition of said land, Except the sale, or disposition of the same, which he may have made to M. G. Vallejo, and by the deed herein before mentioned to Herman Wohler.

Your petitioner hereby refers in support of this, his petition, to the transcript, documents, depositions, and the whole record transmitted by the said Commission, to this Honorable Court, and on file herein.

Wherefore your petitioner prays that the said decree of Confirmation be reformed, or modified, so as to

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Rancho de Napa
Sketch
1880

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p. 36
"Napa, part of"
G. N. Cornwell, Clmt

Napa Co.

264R

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Conform to the description in the deed from Salvador Vallejo to M G Vallejo as aforesaid, or that the decree of this Court shall Conform to the last mentioned deed, or that it shall Contain a proviso that the land to be surveyed to said Cornwall under the decree of this Court shall be found within the Exterior limits of the land described in said deed from Salvador Vallejo, to M. G. Vallejo, and that if not so found, so much thereof as shall be found within said Exterior limits, and that your petitioner shall have such further or other relief as may be just and proper on Consideration of the facts herein before set forth.

W. Tompkins
Atty for petitioner

State of California
City & County of San Francisco } ss

Otto H Frank being duly sworn says, he has read the foregoing petition and knows its Contents, that the same is true of his own knowledge. Except the matters therein stated on his information or belief and as to those matters that he

believes them to be true.

Subscribed and sworn
to before me this
2nd day of January
A D 1880

James C Ward
Notary Public

P. W. Frank

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District Court of the United States for the District of California

The United States
v.s.
George N. Cornwell

Land Commission No 726
U. S. D. Ct No. 120.

Petition of Otto H. Frank in opp to proposed decree of confirmation

Filed January 6th 1880
Lorenzo Hoffman Clerk
By P. D. Simmwood Deputy Clerk

Due service of the within and foregoing petition acknowledged this 3d day of January A.D. 1880

Philip Teare
U.S. Attorney

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In the District Court of the United States for the District of California.

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The United States
vs
Geo. W. Cornwall.

It is stipulated that Otto A. Frank shall have until and including the 20th day of January 1880 to file his brief or argument, in the petition that he has filed in the above entitled case, for a reformation of the decree which the U.S. Attorney has presented therein
Dated January 14. 1880.

Philip Teare
U.S. Attorney

The United States
vs
Horatio Ingraham.

The above stipulation applies to the last entitled case.
Dated Jany 14. 1880.

Philip Teare
U.S. Attorney.

U. S. Dist. Court

Nos. 120 & 122

United States

vs

Geo. W. Cornwall

No. U. S. D. C. 120

United States

vs

Horatio Ingraham

No. U. S. D. Court 122

Stipulation

Filed January 15th A.D. 1880

Southard Hoffman Clerk

By R. D. Grimwood

Deputy Clerk

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C

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In the District Court of the United States for the District of California

The United States
Appellant
vs
George N. Cornwall

U.S. D.C. No 120

In the matter of the petition of Otto H Frank for modification of the decree of Confirmation to George N Cornwall by U S Board of Land Commissioners, for land in the Rancho de Napa in Napa County California.

Brief for petitioner

The petition in this case shows that the decree of Confirmation by the Board Embraces more land than the proof in the case before the Board warranted. The record in the case before this Court, on appeal, Embraces all the proof adduced by the claimant before the Board; this record shows, with the Exception of the Confirmation to the petitioner, that all the allegations of the

petitioner are true. An application is now made to enter a decree, affirming in all things the decree of Confirmation by the Land Commission.

Admitting the truth of the allegation in the petition of the Confirmation to petitioner, which petitioner is ready to show, as alleged, by reference to the records of this Court, there is only one question to be considered, and that is. Does the record authorize the entry of the decree presented to the Court for its approval and for entry? Clearly it does not. There is in the record, as shown by the petition, manifest error in the description of the land conveyed by Vallejo, from whom the appellee derived title. This is not a matter of speculation, but of positive fact, as shown by the record.

No presumption can be indulged in, that proof was introduced before the Board on the subject which induced the decree of the Board, about which the record is silent, because all testimony taken

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before that body, was either original documentary testimony, or in the shape of depositions. All these, the law and the practice of this Court, and of the board, required to be transmitted to this Court, on appeal and constituted the record in the case.

The question presented does not involve the consideration, whether or not the Court should open this case for proof after the lapse of so many years, but whether or not, when called upon the Court should allow the entry of a decree not warranted by the record, and should refuse to modify it, according to the facts presented by the record.

The petitioner is not responsible for the length of time that this appeal has been pending. It was not his duty to apply for a final decree of confirmation, and this is the first opportunity that has been presented to him to oppose the entry.

This case is still not only within the jurisdiction of the Court, but

entirely within its control, and the attention of the Court is here called by this petition, to the error in the decree of the Land Commission as presented by the record, when the correction of that error is not only within its power, but is a matter of duty.

It is a familiar principle of law that a court will not only reform or modify its decree rendered in mistake or error, so long as it shall have control of the case, but will on a proper showing set it aside; how much more strongly then may an appeal be made to this Court to modify, or reform the decree of the Land Commission in respect to an error perfectly apparent from the record, when an application is made to enter a decree affirming in all things the decree from which this appeal has been taken.

We may add a very strong reason, and perhaps a stronger reason than any heretofore urged, why the Court not only has the power to grant, but should grant the prayer of the petition, ~~This~~ this is, that in proceedings

on appeal from the Land Commission to this Court. according to the act of Congress March 3. 1851. and the practice of this Court in such cases. the judgment here is not one of simple affirmation or reversal. but an independent or new judgment, based on the facts disclosed in the record or such further testimony as may be taken by order of the Court

Act of March 3. 1851. Sec 10

In conclusion, we call the attention of the Court to the fact that both in the decree of the Land Commission and in that presented to this Court for approval. any reference to the deed from Salvador Vallejo the original grantee, the actual foundation of the title of Claimant, has been studiously avoided. Now if the Court can do nothing else it can certainly require that its decree shall refer to that deed as the source of title

Respectfully submitted

W. H. Tompkins
Atty for petitioner

No 120

U S Dist Court
State of California

United States
vs
George Connell
matter of
petition
alto H. Frank
for modification
of decree of
Land Commission

Copy
Petition
Order
Bill of exceptions
Notice of motion
Stipulation
Minute Order
Judgment

Filed January 20th day of January
1880

Philip Teare
U. S. Atty

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In the District Court of the United States
for the District of California

United States | Land Commission No 126
v.s.
George N. Cornwall | U.S. Dist Court No 120

In the matter of the petition
of Otto H. Frank for a reformation
of the decree of Confirmation in
the above entitled case.

You will please take notice
that on ~~Wednesday~~ Monday the ~~14th~~ 15th day of November
1880 at the hour of 11. o Clock A.M. of that
day or as soon thereafter as Counsel can
be heard the above entitled case, on the
said petition of Otto H. Frank, will be
taken up for hearing and determination
Dated Novr 3. 1880

Philip Teare
U. S. Attorney

No. 120.

U. S. Dist Court
Dist of California

United States
vs
Geo. N. Cornwall

Petition of Otto H. Frank for reformation of decree of Confirmation

Notice of time fixed for hearing petition

Due service of the within notice acknowledged this 4th day of November 1880

Rob Crouch
Atty for Geo. N. Cornwall

Filed November 9th 1880
Southard Hoffman Clerk
By R. W. Summerwood
Deputy Clerk

P. Teare
U. S. Atty

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At a Stated Term of the District Court of the United States for the District of California held at the Court Rooms of said Court in the City of San Francisco on the 18th day of November A. D. 1850

Present Hon Ogden Hoffman Judge

The United States
v.s.
George N Cornwell
} No 120
Decree of Confirmation
Part of Napa

It appearing to the Court upon inspecting the minutes and entries in the Register of the Clerk on the second day of March A. D 1857 that an order was made by the Court affirming the decree of the Board of Land Commissioners made in the above cause and confirming to the claimant therein, the lands set forth and described in said decree. It further appearing that said order of Confirmation was made on an appeal duly taken from the decision of the said Board of Land Commissioners and was made with the consent of the District Attorney in open Court. And it further appearing to the Court that by neglect or omission of the claimants Attorney,

no formal decree of Confirmation was presented to the Court for signature, and that no such decree has been signed by the Judge or filed of record, and it being suggested to the Court by Philip Teare Esquire, United States Attorney, that the Surveyor General has informed him that it was necessary for the prosecution of public Surveys, that a decree in the said Cause, describing and defining the boundaries of the land so Confirmed as aforesaid, should be entered; and it further appearing to the Court from Statements of the District Attorney that no objection exists to the entry of the decree of Confirmation of the said lands of Claimant, Nunc pro tunc, as of the day when said order of Confirmation was made as shown by the entry in the minutes and in the Register of the Clerk.

Now therefore on the motion of Philip Teare District Attorney, it is ordered that a decree of Confirmation in said Cause, be entered, Nunc pro tunc as of said day.

Wherefore in Consideration of the premises, it is hereby ordered, adjudged and decreed that the said decree is hereby affirmed, and it is further

ordered, adjudged, and decreed that the claim of the said appellee is a good and valid claim and the same is hereby confirmed.

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The lands of which confirmation is hereby made are a part of the place known by the name of Napa which was granted to Salvador Vallejo, which place is described and bounded as follows, to wit

Commencing on the Arroyo of Napa at the boundary of Nicolas Higuera, thence following a Southerly direction to the lower pass of the Arroyo de las Camenas, six thousand varas to a pile of Stones, thence towards the North West along the Arroyo, six thousand varas to the upper road which goes to Napa, thence along the same Arroyo North North West, to the upper road, which goes to the Rancho of Yuntle four thousand six hundred varas, thence continuing on the same course to the boundary of said Yuntle, by Estimation, ten thousand varas, thence toward the North North East, three thousand two hundred and fifty varas to the river Napa, thence down the same river, course South East-

to the Arroyo of Napa fifteen thousand one hundred and seventy five varas, and thence following the same Arroyo, west-wardly two thousand six hundred varas, to the place of beginning, containing four square leagues of land, agreeable to the grant to said Vallejo and the judicial measurement thereof.

That portion of the above described premises of which confirmation is hereby made is bounded and described as follows to wit: All that certain piece or parcel of land situated in Napa Valley on Napa river adjoining Napa City bounded and described as follows: Commencing at a small Oak tree on the North bank of Napa River (near the upper landing) thence running due West along the South line of Cornwells land to the Arroyo de Napa, thence down said Arroyo to Napa river, thence up said river to the place of beginning, being the same land described in a deed from Mariano G. Vallejo to George N. Cornwell dated June 10th 1851. Provided it be the same land contained within the boundaries given and to be found

in a deed from Salvador Vallejo to M. G. Vallejo dated the 26th day of December 1850 recorded in the Recorders Office of the County of Napa in Book A of Deeds pages 256 and 257 and if the land hereinbefore described be not the same land so contained within the boundaries given in said deed from Salvador Vallejo to M. G. Vallejo then only such portion of the land hereinbefore described as shall be contained within said boundaries is hereby confirmed. Also another portion of said tract called Napa, bounded and described as follows, Commencing at a small oak tree standing near the upper Embarcadero on the bank of said Napa River about 170 Yards "more or less" from the Store now occupied by Vallejo and Frisbie, from said tree running a due West Course 200 Yards, thence a due North Course 288 perches to a stake, thence at right angles due East to the Napa River, thence along the meanders of said river to the place of beginning. This tract being the South part of a tract of land purchased of Salvador

Vallejo by Cornwell and Benjamin by deed bearing date August 28. 1849 - and the same tract described in a deed from said Benjamin and wife to said Cornwell dated July 13th 1850. Also the undivided half of another portion of said tract called Napa, bounded and described as follows to wit; Commencing on the bank of said Napa river at the Northeast Corner of the parcel of land last above mentioned, thence running on North line thereof to the North West Corner of the same, thence a due North Course to said river Napa, and thence along said river to the place of beginning, being the North part of a tract of land purchased of Salvador Vallejo by Cornwell and Benjamin by deed bearing date. August 28th A. D. 1849

Ogden Hoffman Jr
Dist Judge

No. 120 N.D.

In the District Court of the United States for the District of California

The United States
vs
George N. Cornwell

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Decree of Confirmation

Filed November 18th AD 1880, as of March 2nd: AD 1859, nunc pro tunc
Southard Hoffman Clerk
By J. D. Simmwood
Deputy Clerk

Entered in Bk Judgments & Decrees at p. 320, 321 & 322

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Provided it be the same land contained within the boundaries given and to be found in a deed from Salvador Vallejo to M. G. Vallejo dated the 26th day of December 1850 recorded in the Recorders Office of the County of Napa ~~State of Cal~~ in Book A of deeds pages 256 and 257 and if the land hereinbefore described be not the same land so contained within the boundaries given in said deed from Salvador Vallejo to M. G. Vallejo then only such portion of the land herein before described as shall be contained within said boundaries is hereby confirmed

Aldrich
Phillips Texas US Cty.
R Connick
Lillie

No 120

The United States
vs
George A. Cornwell

Amendments to be
added to the Decree
drawn by Ralph Scott
Esq

Filed November 18th AD 1880
Southard Hoffman Clerk
By P. D. Grimwood
Deputy Clerk

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The United States
vs
G. K. Cornwell

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In this case neither petition ~~or~~ or answer appear to have been filed - There is no evidence whatever in the transcript except a stipulation that the testimony in case No 495 shall be used in this case - Case No 495 has not been submitted ~~or at bar nor has the Com~~

U. S.
vs
Sewell
Rem.

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

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San Francisco, 1854

John A. Monroe, Esq.
Clerk of the U. S. District Court for the
Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 726 on the Docket of the said Board, wherein George N. Cornwell is the Claimant against the United States, for part of the place known by the name of "Napa"

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,
Geo: Fisher.

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At a Stated Term of the District Court of the United States for the District of California, held at the Court Rooms of said Court in the City of San Francisco on the day of December A. D. 1879.

Present Hon. Ogden Hoffman - Judge

The United States vs George N. Cornwall } No. 120. Decree of Confirmation Part of Napa

It appearing to the Court upon inspecting the minutes and entries in the Register of the Clerk on the second day of March A. D. 1857, that an order was made by the Court affirming the decree of the Board of Land Commissioners made in the above cause and confirming to the claimant therein the lands set forth and described in said decree. It further appearing that said order of confirmation was made on an appeal duly taken from the decision of the said Board of Land Commissioners and was made with the consent of the District Attorney in open

Court: and it further appearing to the Court that by neglect or omission of the claimant's Attorney, no formal decree of confirmation was presented to the Court for signature, and that no such decree has been signed by the Judge or filed of record, and it being suggested to the Court by Philip Deare Esquire, United States Attorney, that the Surveyor General has informed him that it was necessary for the prosecution of public Surveys, that a decree in the said cause, describing and defining the boundaries of the land so confirmed as aforesaid, should be entered; and it further appearing to the Court, from statements of the District Attorney that no objection exists to the entry of the decree of confirmation of the said lands of claimant, Nunc pro tunc, as of the day when said order of confirmation was made as shown by the entry in the minutes and in the Register of the Clerk.

Now therefore on the motion of Philip Deare, District Attorney, it is ordered that a decree of confirmation in said cause, be entered, Nunc pro tunc, as of said day.

Wherefore in consideration of

the premises, it is hereby ordered, adjudged and decreed that the said decree is hereby affirmed, and it is further ordered, adjudged, and decreed that the claim of the said appellee is a good and valid claim and the same is hereby confirmed.

The lands of which confirmation is hereby made are a part of the place known by the name of Napa, which was granted to Salvador Vallejo, which place is described and bounded as follows to wit:

Commencing on the Arroyo of Napa at the boundary of Nicolas Higuera thence following a Southerly direction to the lower pass of the Arroyo de los Carneros, six thousand varas to a pile of stones, thence toward the North West along the Arroyo, six thousand varas to the upper road which goes to Napa, thence along the same Arroyo North North West, to the upper road, which goes to the Rancho of Yuntí four thousand six hundred varas, thence continuing on the same course to the boundary of said Yuntí, by estimation, ten thousand varas, thence toward the North North East, three thousand two hundred and fifty varas

to the river Napa, thence down the same river course South East to the arroyo of Napa, fifteen thousand one hundred and seventy five varas, and thence following the same Arroyo, westwardly two thousand six hundred varas, to the place of beginning, containing four square leagues of land, agreeable to the grant, to said Vallejo and the Judicial Measurement thereof.

That portion of the above described premises of which confirmation is hereby made is bounded and described as follows to wit: all that certain piece or parcel of land situated in Napa Valley on Napa river adjoining Napa City bounded and described as follows: commencing at a smal oak tree on the North bank of Napa river (near the upper landing) thence running due West along the South line of Cornwells land to the arroyo de Napa thence down said arroyo to Napa river, thence up said river to the place of beginning, being the same land described in a deed from Mariano G. Vallejo to George N. Cornwell dated June 10th 1851. Also another

portion of said tract called Napa, bounded and described as follows commencing at a small oak tree standing near the Upper Embarcadero on the bank of said Napa river about 170 yards "more or less" from the store now occupied by Vallejo and Frisbie, from said tree running due West course 200 yards thence a due North course 200 and 88 perches to a stake, thence at right angles due East to the Napa river thence along the meanders of said river to the place of beginning. This tract being the South part of a tract of land purchased of Salvador Vallejo by Cornwell and Benjamin by deed bearing date August 28th 1849. and the same tract described in a deed from said Benjamin and wife to said Cornwell dated July 13th 1850. Also the undivided half of another portion of said tract called Napa, bounded and described as follows, to wit: commencing on the bank of said Napa river at the northeast corner of the parcel of

land last above mentioned, thence running on ____ North line thereof, to the North West corner of the same, thence a due North ____ course to said river Napa, and thence along said river, to the place of beginning, being the North part of a track of land purchased of Salvador Vallejo by Cornwell and Benjamin by deed bearing date, August 28th A.D. 1849.

No. 120

In the District Court of the United States for the District of California

The United States

vs.

George N Cornwell

Decree of Confirmation

Lodged in Clerks Office U.S. District Court Dist of California January 6th 1855
Lockard Hoffman Clerk
By S. D. Grimwood
Deputy Clerk

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